IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.923 OF 2004

Ramesh Balwant Mahajan & ors. : Appellants.

versus

Baliba Sambaji Baral & ors. : Respondents.

Mr.P.K.Hushing for the appellants.

Mr.Umesh Mankapure for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 01st September 2005.

ORAL ORDER

1. Heard Mr.Hushing for the appellants and Mr.Mankapure for the respondents. This is an appeal filed by the plaintiffs against the concurrent findings of the facts which resulted in the dismissal of the suit. The dispute between the plaintiffs and defendants was about the right of way. The respondents was granted

right of way by the Tahasildar under Section 143 of the Land Revenue Code. Subsection 4 of Section 143 provides that any person aggrieved by a decision of the Tahasildar, he should file a suit within one year from the date of such decision to set aside or to get modified that order.

2. The plaintiffs filed a suit simplicitor for declaration and injunction, but did not pray that the order of the Tahasildar should be set aside. His suit was dismissed so also the appeal.

3. In fact, it is the order of the Tahasildar that gives the plaintiff a cause of action and the period has to be recount from the date of the decision. If there is no prayer for setting aside the order of the Tahasildar, then trying to get simplicitor declaration and injunction would be an indirect way of getting over the order of the Tahasildar without challenging the same before the Civil Court. Both the courts below therefore rightly dismissed the case of the plaintiffs. There is no merit in this appeal. The appeal is dismissed along with

the civil application.

[D.G.DESHPANDE,J]